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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

CHARLES CATHCART *et al.* )

Civil No. 07-4762-PJH

UNITED STATES' RESPONSE TO  
CHARLES HSIN'S AND OPTECH  
LIMITED'S ADMINISTRATIVE  
MOTION TO CONTINUE THE ENTIRE  
CASE MANAGEMENT SCHEDULE  
ORDER

The United States respectfully submits this memorandum opposing Charles Hsin's  
("Hsin") and Optech Limited's ("Optech") request for an eleven-month extension of the litigation

1 schedule. *See* Charles Hsin and Optech Limited's Motion, Pursuant to Local Rule 7-11<sup>1</sup> to  
2 Continue the Entire Case Management Schedule Order, Dkt. No. 111 (hereinafter "the Mot.").

3 The United States agrees that an extension of the litigation schedule is appropriate. For  
4 this reason, the United States agrees that Nagy's proposed continuance of the trial schedule,  
5 which is reasonable, should be adopted by the Court. *See* Robert Nagy's Mot. to Continue the  
6 Trial Date and All Associated Deadlines, Dkt. No. 113.

7 Hsin's and Optech's request for an eleven-month extension is unreasonable and without  
8 any basis. An eleven-month extension would substantially prejudice the United States, which is  
9 seeking to enjoin defendants from promoting an alleged tax-fraud scheme that is believed to have  
10 cost the United States millions of dollars in unpaid tax revenue. *See* First Am. Compl. ¶83, Dkt.  
11 No. 57.

12 Hsin and Optech have consistently engaged in delay tactics. The United States served  
13 Hsin and Optech with the First Amended Complaint (amended to add them and Franklin  
14 Thomason, another party, as defendants) on May 13, 2008. *See* Affidavit of Service, Dkt. # 74.  
15 Hsin and Optech sought two extensions of time for responding to the complaint. They sought and  
16 received an initial extension of time on grounds that their counsel needed more time to assess the  
17 case and run a conflicts check. *See* Stip. for Enlargement of Time to File Answer to United  
18 States' First Am. Compl., Dkt. No. 69. The United States agreed to a twenty-eight day extension.  
19 *See id.* Right before that first extension was going to run, Hsin's and Optech's counsel moved the  
20 Court for a second extension, with the possibility of seeking a third extension, claiming that  
21 during the time allotted for the first extension, their ethics counsel had been on vacation and that  
22 the conflicts check was still not complete. *See* Ex Parte Application to Extend Time To Answer  
23 and Declaration, Dkt. Nos. 73, 77. Ultimately, the United States agreed to provide Hsin and  
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25 <sup>1</sup> Local Rule 7-11 pertains to motions for administrative relief, which relate to instances  
26 when "the Court recognizes that during the course of case proceedings a party may require a Court  
27 order with respect to miscellaneous administrative matters, not otherwise governed by a  
28 federal statute, Federal or local rule or standing order of the assigned judge." Hsin and Optech  
seek to amend the Court's Case Management and Pretrial Order, Dkt. No. 27.

1 Optech with a total of sixty-three days for responding to the complaint. *See* United States'  
2 Response to Hsin's and Optech's Mot. for Extension of Time to Answer Compl., Dkt. No. 79.  
3 Hsin and Optech then moved to dismiss the case; a hearing on that motion is scheduled for  
4 September 10.

5 Now, Hsin and Optech seek eleven more months, because they contend that they have not  
6 been able to perform any discovery. *See* Mot. at ¶6. Hsin and Optech, however, have chosen not  
7 to propound any written discovery to date. During an August 26 telephone conversation with  
8 counsel for the United States, Edward Ord, apparent counsel for Hsin and Optech, explained that  
9 he could not yet propound written discovery, because among other things, a conflicts check is still  
10 not complete and he may have to withdraw from his representation of Hsin and Optech. *See*  
11 Baker Decl. ¶4, Ex. A. The Government served Hsin and Optech over three months ago. Hsin's  
12 and Optech's counsel have had adequate time to assess whether any such conflicts of interest  
13 exist. Their failure to complete this process hardly justifies adding an additional eleven months to  
14 the litigation schedule.

15 Ord already has more than a passing knowledge of the relevant facts of this case. Ord  
16 represented Derivium Capital before the IRS' investigation that gave rise to this litigation. *See*  
17 Decl. of Edward O.C. Ord In Opposition to the Trustee's Motion to Convert the Chapter 11  
18 Proceeding to Chapter 7 (S.D. N.Y. No. 05-37491 (CGM)), ¶¶ 4-7, Ex. B. Indeed, the bankruptcy  
19 proceeding referenced above and now pending in the United States District Court for the District  
20 of South Carolina has been the source for nearly all of the documents that the Government has  
21 provided to the defendants in this litigation. The overwhelming majority of these documents are  
22 from the working files of the defendants in this case, who previously provided these files to the  
23 special counsel for the trustee; the United States has produced those files back to the defendants.  
24 During their August 26 telephone conversation, counsel for the United States also informed Ord  
25 that the United States will be producing to Hsin and Optech imminently all of these very same  
26 documents. *See* Baker Decl. ¶5. Ord indicated that he was authorized to accept this production.  
27 *See id.*

1 Hsin also apparently anticipated being named as a defendant in this case. Charles  
2 Cathcart testified during his recent deposition that he spoke with Hsin about this litigation in  
3 September 2007, which is when this case was first filed, because Hsin wanted to retain an  
4 attorney to represent him. Cathcart explained:

5 Q: When was the last time you had a communication with him [Charles Hsin]?

6 A: I think last September.

7 Q: Last September 2007?

8 A: Right.

9 Q: And what was the nature of that communication?

10 A: To recommend an attorney for him.

11 Q: For what purpose?

12 A: For this litigation.

13 Q: Who did you recommend?

14 A: Edward Ord.

15 Q: Do you know if Mr. Hsin took your recommendation?

16 A: I believe he did.

17 Cathcart Dep. Tr. 105:4-18, Ex. D.<sup>2</sup> Hsin's and Optech's request for an eleven-month extension  
18 is unreasonable and without any basis.

### 19 Conclusion

20 For all of the foregoing reasons, the United States respectfully requests that the Court  
21 deny Hsin's and Optech's request for an eleven-month extension of the litigation schedule and  
22 adopt Robert Nagy's proposed litigation schedule.

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23 <sup>2</sup> Hsin and Optech also contend that an eleven-month extension of the litigation  
24 schedule is necessary, because the Government has not yet served Franklin Thomason,  
25 another named defendant. *See* Mot. at ¶10. Since early May, the United States has employed two  
26 sets of revenue officers and a private process server to serve Thomason at his last known address,  
27 all to no avail. *See* United States' Mot for an Extension of Time in Which To Serve Franklin  
28 Thomason and for Permission to Serve by Publication; Order Granting United States' Motion, Dkt.  
Nos. 97,99. The United States should not suffer any more prejudice by having to postpone its  
litigation schedule for nearly one year because of one defendant who has consistently evaded  
service.

1 Dated: September 8, 2008

2 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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